



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

RALPH T. MUILENBURG, DC

**Respondent Name**

METROPOLITAN TRANSIT AUTHORITY

**MFDR Tracking Number**

M4-15-4149-01

**Carrier's Austin Representative**

Box Number 29

**MFDR Date Received**

AUGUST 24, 2015

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "I AM REQUESTING A MDR FOR THE DATES OF SERVICE LISTED ABOVE."

**Amount in Dispute:** \$420.50

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The documentation lacked elements required per rule 134.204(g). The elements the FCE lacked were stated on the EOB."

**Response Submitted By:** STARR Comprehensive Solutions, Inc.

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 4, 2015	CPT Code 97750-FC (7 units) Functional Capacity Evaluation (FCE)	\$300.00	\$0.00
March 7, 2015	CPT Code 99080-CP (51 pages)	\$25.50	\$25.50
March 11, 2015	CPT Code 99358 Prolonged Evaluation and Management Service	\$95.00	\$0.00
TOTAL		\$420.50	\$25.50

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.204 and §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. Texas Labor Code §404.155, effective June 15, 2007 outlines the cost for certain copies.
4. 28 Texas Administrative Code §134.120 titled *Reimbursement for Medical Documentation* effective May 2,

2006 sets out the fees for medical documentation.

5.

6. The services in dispute were reduced/denied by the respondent with the following reason codes:

- 150-Payment adjusted because the payer deems the information submitted does not support his level of service.
- 150-Documentation submitted does not support the level of service required for an FCE. Per DWC rule 134.204(g): FCE's shall also include the following elements:
  - (1) A physical examination and neurological evaluation, which include the following:
    - (A) appearance (observational and palpation);
    - (B) flexibility of the extremity joint or spinal region (usually observational);
    - (C) posture and deformities;
    - (D) vascular integrity;
    - (E) neurological tests to detect sensory deficit;
    - (F) myotomal strength to detect gross motor deficit; and
    - (G) reflexes to detect neurological reflex symmetry.
  - (3) Functional abilities tests, which include the following:
    - (C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill.

The report submitted does not support the above mentioned requirements were met.
- W3-Additional reimbursement made on reconsideration.
- 193-Original payment decision is being maintained. This claim was processed properly the first time.
- W3/193-Per rule 134.804, W3 is to be used when a payment is made following a request for reconsideration. The service adjustment amount associated with this code may be zero. Original payment decision is being maintained.
- 4-The procedure code is inconsistent with the modifier used or a required modifier is missing.
- P14-The Benefit for this Service is included in the payment/allowance for another service/procedure that has been performed on the same day.
- P14-Reports are global of the evaluation and management service.
- 4-Incorrect modifier used.
- 150-Complexity of the diagnosis should not require extended physician time past the normal time for an office visit.
- 150-Documentation provided does not support an office visit on 3/11/15 date of service.
- P14-CMS assigns a status indicator of 'B' in the Federal Register to codes they consider bundled or integral to another service, whether performed.

### **Issues**

1. Does the documentation support the level of service required for an FCE?
2. Is the allowance of code 99080-CP included in the allowance of another service rendered on the disputed date of service?
3. Does the documentation support billing CPT code 99358? Is the requestor entitled to reimbursement?

### **Findings**

1. This dispute relates to services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.204.

On the disputed date of service, the requestor billed CPT code 97750-FC.

The American Medical Association (AMA) Current Procedural Terminology (CPT) defines CPT code 97750 as "Physical performance test or measurement (eg, musculoskeletal, functional capacity), with written report, each 15 minutes."

The requestor appended modifier "FC" to code 97750. 28 Texas Administrative Code §134.204(n)(3) states "The following Division Modifiers shall be used by HCPs billing professional medical services for correct coding, reporting, billing, and reimbursement of the procedure codes. (3) FC, Functional Capacity-This modifier shall be added to CPT Code 97750 when a functional capacity evaluation is performed".

28 Texas Administrative Code §134.204(g) states "The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. FCEs shall include the following elements:

(1) A physical examination and neurological evaluation, which include the following:

- (A) appearance (observational and palpation);
- (B) flexibility of the extremity joint or spinal region (usually observational);
- (C) posture and deformities;
- (D) vascular integrity;
- (E) neurological tests to detect sensory deficit;
- (F) myotomal strength to detect gross motor deficit; and
- (G) reflexes to detect neurological reflex symmetry.

(2) A physical capacity evaluation of the injured area, which includes the following:

- (A) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and
- (B) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative database. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.

(3) Functional abilities tests, which include the following:

- (A) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);
- (B) hand function tests that measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;
- (C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and
- (D) static positional tolerance (observational determination of tolerance for sitting or standing)."

The respondent wrote in the position summary that "There has been no documentation submitted that supports submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill. As such, the respondent maintains its position that CPT code 97750-FC was correctly denied in accordance with the TDI-DWC rule 134.204(g)."

The respondent denied reimbursement for the FCE because key elements required by 28 Texas Administrative Code §134.204(g)(1) and (3) were missing. A review of the FCE report finds that the respondent's denial is supported. As a result, reimbursement is not recommended.

2. According to the explanation of benefits, the respondent denied code 99080-CP based upon reason code "4," and "P14."

CPT code 99080 – special reports or copies of reports.

The requestor wrote, "In this case, 51 pages of medical documentation were sent to the Designated Doctor, Dr Kirkwood for an exam."

Texas Labor Code §408.0041(c), states "The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities."

28 Texas Administrative Code §134.120(e), states "The health care provider shall provide copies of any requested or required documentation to the Division at no charge."

28 Texas Administrative Code §134.120(f), states "The reimbursements for medical documentation are: (1) copies of medical documentation--\$.50 per page." Therefore, 51 pages X \$.50 = \$25.50. The respondent paid \$0.00. The difference between amount due and paid is \$25.50.

3. 28 Texas Administrative Code §134.203(a)(5) states "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

CPT code 99358 is defined as “Prolonged evaluation and management service before and/or after direct patient care; first hour.”

The requestor wrote “Today, Dr. Muilenburg reviewed a request, and attached date, for a Designated Doctor Examination dated March 10, 2015, from attorney Dean Pappas to Dr. Ronald Wayne Kirkwood.” The Division finds that reviewing a Commission Order to send records to Dr. Kirkwood does not meet the definition or code 99358. As a result, reimbursement is not recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$25.50.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$25.50 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____	_____	11/13/2015
Signature	Medical Fee Dispute Resolution Officer	Date

## ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**